

Steve Mikhov, State Bar No. 224676  
*stevemusfc@knightlaw.com*

Amy Morse, State Bar No. 290502  
*amym@knightlaw.com*

**KNIGHT LAW GROUP, LLP**  
10250 Constellation Blvd., Suite 2500  
Los Angeles, CA 90067  
Tel: 310-552-2250  
Fax: 310-552-7973

Attorneys for Plaintiff,  
SAMIRA SADEGHI

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

IN RE: VOLKSWAGEN “CLEAN DIESEL”  
MARKETING, SALES PRACTICES, AND  
PRODUCTS LIABILITY LITIGATION

MDL Lead Case No.: 3:15-md-02672-CRB

Unlimited Jurisdiction

**AMENDED COMPLAINT**

**THIS DOCUMENT RELATES TO:**

*Samira Sadeghi, et al v. Volkswagen Group of America, Inc. et al*, Case No. 3:17-cv-04348-CRB

- 1. FRAUD IN THE INDUCEMENT - INTENTIONAL MISREPRESENTATION**
- 2. FRAUD IN THE INDUCEMENT - CONCEALMENT**
- 3. VIOLATION OF THE SONG-BEVERLY ACT – BREACH OF IMPLIED WARRANTY**

Plaintiff, SAMIRA SADEGHI, alleges as follows against Defendant, VOLKSWAGEN GROUP OF AMERICA, INC. d/b/a AUDI OF AMERICA, INC., **VOLKSWAGEN AKTIENGESELLSCHAFT**, DOES 2 through 10 inclusive, on information and belief, formed after an inquiry reasonable under the circumstances:

**DEMAND FOR JURY TRIAL**

1. Plaintiff, SAMIRA SADEGHI (“Plaintiff”), hereby demands trial by jury in this action.

**GENERAL ALLEGATIONS**

2. Plaintiff, SAMIRA SADEGHI (“Plaintiff”), is an individual residing in the City of Newport Coast, County of Orange, State of California.

3. Defendant, VOLKSWAGEN GROUP OF AMERICA, INC., d/b/a AUDI OF AMERICA, INC. (hereafter “Volkswagen America” or “VW America”), is and was a New Jersey corporation registered to do business in the State of California with its registered office in the City of Sacramento, County of Sacramento, State of California.

4. **Defendant, Volkswagen Aktiengesellschaft (“VW AG” or “Volkswagen AG”), is a German corporation with its principal place of business at Berliner Ring 2, 38440 Wolfsburg, Germany. VW AG may be served with process at Volkswagen Aktiengesellschaft, Brieffach 1998, D-38436, Wolfsburg, Germany. At all relevant times to the allegations in this lawsuit, VW America was the agent of VW AG and all misrepresentations at issue in this lawsuit and described below in more detail were made with knowledge and intent by VW AG and VW America (together, the “Volkswagen Defendants” or “Volkswagen”) that the misrepresentations would be repeated to third-parties, like Plaintiff, and that such third-parties would rely on them.**

5. Plaintiff does not know the true names and capacities, whether corporate, partnership, associate, individual or otherwise of Defendant issued herein as Does 2 through 10, inclusive, under the provisions of section 474 of the Code of Civil Procedure. Defendant Does 2 through 10, inclusive, are in some manner responsible for the acts, occurrences and transactions set forth herein, and are legally liable to Plaintiff. Plaintiff will seek leave to amend this Complaint to set forth the true names and capacities of the fictitiously named Defendants, together with appropriate charging allegations, when ascertained.

6. All acts of corporate employees as alleged were authorized or ratified by an officer, director or managing agent of the corporate employer.

7. Each Defendant, whether actually or fictitiously named herein, was the principal, agent (actual or ostensible), or employee of each other Defendant and in acting as such principal

1 or within the course and scope of such employment or agency, took some part in the acts and  
2 omissions hereinafter set forth by reason of which each Defendant is liable to Plaintiff for the relief  
3 prayed for herein.

4 8. On February 18, 2011, Plaintiff purchased a new 2011 Audi Q7 TDI, VIN:  
5 WA1WMAFE2BD006329, ("the vehicle"), and express warranties accompanied the sale of the  
6 vehicle to Plaintiff by which Defendant Volkswagen undertook to preserve or maintain the utility  
7 or performance of Plaintiff's vehicle or provide compensation if there was a failure in such utility  
8 or performance.

9 9. The vehicle was delivered to Plaintiff with serious defects and nonconformities to  
10 warranty, including, but not limited to, a defeat device that was programmed to give false  
11 emissions readings during emissions testing despite the vehicle emitting hazardous chemicals  
12 during normal operation at rates exceeding legal California emissions standards.

13 10. Plaintiff hereby revokes acceptance of the sales contract.

14 11. Plaintiff hereby demands trial by jury in this action.

15 **STATEMENT OF FACTS**

16 12. Plaintiff purchased a 2011 Audi Q7 TDI from Newport Auto Center. Unbeknownst  
17 to Plaintiff, at the time of acquisition the vehicle was equipped with a so-called "defeat device,  
18 designed specifically to cheat on emissions tests, bypass California emissions standards and  
19 deceive consumers and regulators.

20 13. Before purchasing the vehicle, Plaintiff conducted research and reviewed  
21 advertisements regarding Volkswagen's "clean" diesel vehicles, which led Plaintiff to believe that  
22 the vehicle was good for the environment and fuel efficient.

23 14. Representations regarding fuel efficiency and emissions, as well as the vehicle's  
24 reputation for maintaining a high resale value, induced Plaintiff into purchasing the vehicle. Due  
25 to the inclusion of the defeat device, however, the vehicle could not deliver the high performance  
26 that was advertised, including the low emissions and fuel economy. As a result of Volkswagen's  
27 conduct, Plaintiff has suffered harm. Volkswagen's conduct is a direct and proximate cause of  
28 Plaintiff's damages. But for Volkswagen's fraudulent concealment of presence of the defeat

1 device, Plaintiff would not have purchased the vehicle.

2 **PERSONAL JURISDICTION OVER VOLKSWAGEN AG**

3 15. Personal jurisdiction over Volkswagen AG is proper because Volkswagen AG  
4 purposefully availed itself of the privilege of conducting activities within the State of  
5 California with the expectation that its fraudulent vehicles would be purchased by California  
6 consumers, thereby giving rise to the underlying controversy. Such purposeful availment  
7 and activities within and related to the State of California include, but are not limited to: (1)  
8 Defendants' contractual relationships discussed below which give rise to the source, supply,  
9 manufacturing, production, importation, research and testing, analyzing, processing,  
10 distribution, advertising, marketing, and sale of Plaintiff's vehicle; (2) agreements between  
11 Defendants and entities, institutions, and laboratories within the State of California  
12 regarding Defendants' fraudulent vehicles; (3) marketing and advertising of the fraudulent  
13 vehicles to California citizens, including Plaintiff; (4) direct communications between  
14 Volkswagen AG employees and/or agents with California regulators concerning whether  
15 Defendants' fraudulent vehicles complied with California's emission standards; (5) and  
16 other actions targeted to the State of California to be obtained through discovery and other  
17 means.

18 16. Volkswagen AG acted both directly and indirectly to (1) transact business in  
19 California; (2) supply services or things in California; (3) cause tortious injury by an act or  
20 omission in California; and (4) cause tortious injury in California by an act or omission  
21 outside California.

22 17. Personal jurisdiction over Volkswagen AG is proper because Volkswagen AG's  
23 direct contacts with the state of California form the basis of the fraud claims alleged in this  
24 lawsuit. Personal jurisdiction over Volkswagen AG is further proper because the California  
25 contacts of Volkswagen America concerning the fraud that forms the basis of this lawsuit  
26 can be imputed to Volkswagen AG pursuant to the agency relationship between and among  
27 the Defendants as alter egos, co-conspirators, and/or joint venturers.

28 18. As set forth below, Volkswagen America is the agent, both actual and implied,

1 of Volkswagen AG and was Volkswagen AG's agents as to the marketing, promotion, sale,  
2 and distribution of the vehicle Plaintiff purchased in California. Volkswagen America  
3 carried out the marketing, promotion, sale, and distribution of the vehicle Plaintiff  
4 purchased as Volkswagen AG's agent. Volkswagen America's actions in, and contacts with,  
5 California can be imputed to Volkswagen AG because of the agency relationship between  
6 and among those parties.

7 19. Volkswagen AG used Volkswagen America as its alter ego for the marketing,  
8 promotion, sale and distribution of the vehicle Plaintiff purchased in California. Volkswagen  
9 of America, a wholly owned subsidiary of Volkswagen AG, exists solely to promote the sale  
10 and distribution of Volkswagen AG products, including the vehicle Plaintiff purchased.  
11 Volkswagen America's actions in, and contacts with, California can be imputed to  
12 Volkswagen AG pursuant to an alter ego theory.

13 20. At all relevant times herein, Volkswagen AG and Volkswagen America operated  
14 a joint venture (the "Joint Venture") in California in which they agreed to assist each other  
15 in designing, importing, distributing, marketing and selling certain motor vehicles in  
16 California, including the vehicle Plaintiff purchased that is at issue in this lawsuit.

17 21. At the critical stages in the foregoing activities, Defendants acted as agents for  
18 each other in pursuing their common goal of selling their fraudulent vehicles, including the  
19 vehicle Plaintiff purchased. Each Defendant maintained a voice in the control and  
20 management of the Joint Venture, and each shared in the profits and losses of the Joint  
21 Venture. Volkswagen America's actions in, and jurisdictional contacts with, California are  
22 imputed to Volkswagen AG by virtue of the Joint Venture.

23 22. Volkswagen AG's relationship with Volkswagen America goes far beyond that of  
24 a mere parent-subsidary relationship. Volkswagen AG exercises significant and total  
25 control over Volkswagen America's day to day operations, and exercised total control over  
26 Volkswagen America in directing and carrying out the fraud that forms the basis of this  
27 lawsuit. Indeed, Volkswagen AG's control is so persistent and total that numerous courts  
28 across the country have found that Volkswagen America is the proper agent for service of

1 process for Volkswagen AG.

2 23. Even if there was no parent-subsidary relationship between Volkswagen AG and  
3 Volkswagen America, personal jurisdiction would still be proper over Volkswagen AG  
4 because of Volkswagen AG's own conduct with regard to the fraud that forms the basis of  
5 this lawsuit. Volkswagen AG sold to Volkswagen America, both directly and indirectly, their  
6 fraudulent vehicles with the knowledge and intent that Volkswagen America would resell  
7 and distribute them to Plaintiff and throughout the United States. Further, Volkswagen AG  
8 worked with and directed Volkswagen America to advertise and market their fraudulent  
9 vehicles to consumers, such as Plaintiff. Volkswagen AG used its own employees and directed  
10 Volkswagen America to formulate and disseminate false information about their fraudulent  
11 vehicles. Volkswagen AG not only directed Volkswagen America employees to carry out the  
12 fraud, but Volkswagen AG sent its own employees to carry out and perpetrate the fraud that  
13 forms the basis of this lawsuit. Volkswagen AG required Volkswagen America to use false  
14 information about their fraudulent vehicles in marketing campaigns. Volkswagen AG  
15 employees developed and promoted these campaigns.

16 24. The entire Volkswagen Dieselgate scandal occurred as a result of Volkswagen  
17 AG's focused efforts to increase its market share in the United States. In 2007, Volkswagen  
18 AG set goals for Volkswagen to become a world leader in automobile manufacturing,  
19 including tripling of the number of vehicles sold in the United States. In order to sell their  
20 fraudulent vehicles in the United States and California, Volkswagen AG appointed its  
21 wholly-owned subsidiary, Volkswagen America, to transact and manage the business affairs  
22 of importing, distributing, marketing and the sale of Volkswagen AG vehicles, including the  
23 vehicle Plaintiff purchased. Pursuant to this agreement, Volkswagen AG sold the fraudulent  
24 vehicles, along with hundreds of thousands of other vehicles to Volkswagen America  
25 throughout the United States and California. All of this was accomplished, and the  
26 fraudulent vehicle was sold to Plaintiff, pursuant to an Importer Agreement between  
27 Volkswagen AG and Volkswagen America (the "Volkswagen Importer Agreement"). This  
28 Importer Agreement was not arms-length transactions. Volkswagen AG required

1 Volkswagen America to enter into the agreement.

2 25. The Importer Agreement appoints Volkswagen America as the sole authorized  
3 U.S. importer and distributor of vehicles manufactured by Volkswagen AG. Volkswagen  
4 America agreed to assume responsibility for the importation, distribution, marketing and  
5 sale of Volkswagen vehicles, including the vehicle Plaintiff purchased. Volkswagen America  
6 was the sole authorized U.S. importer and distributor of the fraudulent vehicles, as well as  
7 other vehicles manufactured by Volkswagen AG, and Volkswagen America obtained the  
8 Certificates of Conformity that allowed Volkswagen AG and to sell the fraudulent vehicles,  
9 and all their vehicles, in the United States.

10 26. The Importer Agreement divides functions and promotes the common purpose of  
11 selling Volkswagen vehicles, including the fraudulent vehicles, throughout the United States.  
12 Pursuant to these agreements, Volkswagen AG had the right and power to control the means  
13 and methods by which Volkswagen America performed its work in marketing, sales,  
14 promotion and public relations and did in fact exercise such power and control over  
15 Volkswagen America. Volkswagen AG oversaw and controlled all of the details of  
16 Volkswagen America's marketing, sales, promotion and public relations concerning the  
17 fraudulent vehicles.

18 27. The Importer Agreement required Volkswagen America to establish a dealer  
19 network based on Volkswagen AG's schedule and conditions. It was this extensive dealer  
20 network that allowed Volkswagen AG to sell over 600,000 of the fraudulent vehicles to  
21 Plaintiff and other consumers throughout the United States. Volkswagen America  
22 established this dealer network at the direction, and with the direct participation, of  
23 Volkswagen AG.

24 28. Volkswagen AG appointed Volkswagen America to transact and manage the  
25 business affairs of importing, distributing, marketing and the sale of the fraudulent vehicles,  
26 as well as other Volkswagen vehicles. Volkswagen AG, and Volkswagen America divided  
27 functions and worked together for the common purpose of selling Volkswagen vehicles,  
28 including the vehicle Plaintiff purchased. Pursuant to their agreements, Volkswagen AG



1 had the right and power to control the means and methods by which Volkswagen America  
2 performed its work in the marketing, sales, promotion and public relations concerning the  
3 fraudulent vehicles. Volkswagen AG could not conduct business in the United States or  
4 California, either directly or indirectly, without the assistance of Volkswagen America.  
5 Volkswagen AG controls the methods and details of Volkswagen America's work to such an  
6 extent that Volkswagen America is the agent of Volkswagen AG.

7 29. The following additional facts further demonstrate the total control Volkswagen  
8 AG exercises over Volkswagen America, either directly or indirectly, making the subsidiary  
9 nothing more than a corporate division of Volkswagen AG

- 10 • Volkswagen AG owns 100% of the outstanding stock of Volkswagen America;
- 11 • Volkswagen AG elects and controls the board of directors and the chairman  
12 of the board of directors of Volkswagen America in Virginia ;
- 13 • Volkswagen America is the sole authorized U.S. importer and distributor of  
14 vehicles manufactured by Volkswagen AG ;
- 15 • Volkswagen America officials participated in the obtaining of the Certificates  
16 of Conformity that allowed Volkswagen AG to sell their vehicles, including the  
17 the vehicle Plaintiff purchased;
- 18 • Volkswagen America is required to, and does in fact, promote the image and  
19 good reputation of Volkswagen AG, which was done in furtherance of the  
20 fraud that forms the basis for this lawsuit;
- 21 • Volkswagen America is prohibited by Volkswagen AG from modifying any of  
22 Volkswagen AG's vehicles, including the fraudulent vehicles, without their  
23 prior written approval;
- 24 • Volkswagen AG is authorized, both directly and indirectly, by Volkswagen  
25 America to control the means and methods by which Volkswagen America  
26 marketed and sold Volkswagen AG's vehicles, including the vehicle Plaintiff  
27 purchased. Volkswagen AG exercises this control at and through Volkswagen  
28 America's corporate headquarters;
- Volkswagen America is prohibited by Volkswagen AG from selling,  
marketing or promoting vehicles manufactured by companies other than  
Volkswagen AG and Audi AG;
- Volkswagen America is required by Volkswagen AG to sell and service used  
cars at its U.S. dealerships and to take used cars in trade;



- Volkswagen AG determines, both directly and indirectly, the warranty offered on the cars sold by Volkswagen America, including the warranty offered on the fraudulent vehicles;
- Volkswagen AG make no warranty (express or implied) as to the products supplied by Volkswagen AG to Volkswagen America;
- Volkswagen America is required by Volkswagen AG to lease cars;
- Volkswagen America is required to establish marketing and public relations objectives and strategies within the guidelines established by Volkswagen AG. These objectives and strategies using false information to market the fraudulent vehicles were established by Volkswagen America;
- Volkswagen AG controls Volkswagen America's advertising content as well as how much money it spends on advertising, including advertising concerning the fraudulent vehicles. Such advertising content for the fraudulent vehicles was developed by Volkswagen America;
- Volkswagen America is required by Volkswagen AG to make warranty repairs on all Volkswagen AG vehicles, including the fraudulent vehicle Plaintiff purchased, in accordance with Volkswagen AG's guidelines and procedures;
- Volkswagen America is required by Volkswagen AG to use the workshop tools and equipment specified by Volkswagen AG to service vehicles, including the fraudulent vehicle Plaintiff purchased;
- Volkswagen America is required by Volkswagen AG to perform all repairs and maintenance work in accordance with Volkswagen AG's guidelines and procedures;
- Volkswagen America is required to perform its pre-delivery inspections of Volkswagen AG's vehicles, including the fraudulent vehicle Plaintiff purchased, according to Volkswagen AG's instructions and guidelines;
- Volkswagen America is required to ensure that its standardized data processing and communications programs are compatible with Volkswagen AG's standardized data processing and communications programs;
- Volkswagen America is required to maintain a modern computer communications system for processing warranty claims that is compatible with Volkswagen AG's system to enable Volkswagen AG to track warranty cost projections;

- 1 • Volkswagen America is required to submit to Volkswagen AG on a regular  
2 basis information requested by Volkswagen AG concerning business data,  
3 warranty and warranty related matters, enactments or changes of any  
4 relevant laws and regulations, including taxes and customs and any other  
5 matters which may affect any aspect of their import agreement;
- 6 • Volkswagen America is required to inform Volkswagen AG of any  
7 modification of U.S. laws which may affect the manufacturing of vehicles and  
8 regulations governing the use thereof including safety requirements;
- 9 • Volkswagen America provides regular reports to Volkswagen AG on the  
10 development of the market generally and its business activities in the U.S.,  
11 including reports on the fraudulent vehicles;
- 12 • Volkswagen America and Volkswagen AG determine the profit margin  
13 Volkswagen America received on the sale of the fraudulent vehicles, as well as  
14 its sale of other Volkswagen cars; and
- 15 • Volkswagen America cannot, without written approval of Volkswagen AG,  
16 enter into any agreements or arrangements to promote the sale of goods or  
17 services from its business premises unless such activities do not affect in any  
18 regard Volkswagen AG's business interests

19 30. One of the many ways that Volkswagen AG directly managed and controlled  
20 Volkswagen America's affairs, including the fraud that forms the basis for this lawsuit, is  
21 through an expatriate program wherein Volkswagen AG officers and employees were  
22 assigned to work for Volkswagen America at Volkswagen America's corporate  
23 headquarters. Volkswagen AG employees came to Volkswagen America's corporate  
24 headquarters and directed, controlled, and participated in the fraud that forms the basis of  
25 this lawsuit. Volkswagen AG's expatriate officers and employees oversaw Volkswagen  
26 America's operations, including its marketing, promotion, and distribution of the fraudulent  
27 vehicles. For example, Volkswagen AG used the expatriate program to appoint Michael  
28 Horn as Volkswagen America's CEO. Volkswagen AG used Michael Horn and other  
German expatriates to manage and control Volkswagen America's operations, including the  
distribution of the fraudulent vehicle to Plaintiff and the marketing and advertising of the  
fraudulent vehicle to Plaintiff.

31. Further, Volkswagen AG trains and assigns Volkswagen America employees.

1       32. In furtherance of the “Dieselgate” fraud, Volkswagen AG developed technical  
2 service “flash” software that was designed to help hide the presence of the defeat device.  
3 Volkswagen AG labeled the software as an “update,” provided this update to Volkswagen  
4 America, and directed Volkswagen America to install the software on their fraudulent  
5 vehicles unbeknownst to U.S. consumers, including Plaintiff.

6               **Volkswagen’s Plot to Illegally Circumvent California Emissions Regulations**

7       33. This lawsuit is about a fraudulent deceptive scheme (referred to herein as the  
8 “Deceptive Emissions Scheme”) to deliberately lie, cheat and intentionally deceive  
9 consumers about the characteristics, benefits and value of Volkswagen’s “clean” diesel  
10 vehicles.

11       34. In or around 2005, following the success of environmentally friendly vehicles such  
12 as the Toyota Prius, Volkswagen made the decision to focus on “clean” diesel technology to  
13 achieve its market share of “green” vehicle consumers.

14       35. Volkswagen spent millions of dollars in research and development in the  
15 production of the EA 189 TDI (“TDI” stands for “turbocharged direct injection”) diesel engine.

16       36. At the time of development, diesel engines made up just 5% of the U.S. car market  
17 and Volkswagen saw an opportunity to become the market leader through this so-called “clean”  
18 diesel; however, in order to capitalize on the “green” vehicle market, Volkswagen needed to  
19 overcome public stigma associated with diesel technology, which included the perception that  
20 diesel engines emit high levels of toxic pollutants. With the TDI, Volkswagen claimed to have  
21 drastically limited toxic emissions.

22       37. Volkswagen marketed the TDI as a “clean” diesel alternative to other  
23 environmentally friendly green engines, such as hybrids and electric cars.

24       38. Behind the scenes, Volkswagen realized internally that it was not possible to roll  
25 out these so-called “clean” diesel vehicles within its self-imposed budgets and engineering  
26 constraints. Volkswagen mandated the development of a diesel engine that maintained the  
27 performance of traditional gasoline engines with reduced CO<sub>2</sub> emissions and fuel consumption, all  
28 while meeting the strict NO<sub>x</sub> emission standards in California.

1           39.     NO<sub>x</sub> is a generic term for the mono-nitrogen oxides NO and NO<sub>2</sub> (nitric oxide and  
2 nitrogen dioxide), which are predominantly produced from the reaction of nitrogen and oxygen  
3 gases in the air during combustion. NO<sub>x</sub> is produced by the burning of fossil fuels, but it is  
4 particularly difficult to control from the burning of diesel fuel. NO<sub>x</sub> is a toxic pollutant, which  
5 produces smog and a litany of environmental and health problems, as detailed further below.

6           40.     Diesel fuel is traditionally denser than gasoline, and the syrupy fuel contains longer  
7 hydrocarbon chains, which tend to produce a more efficient vehicle. In fact, diesel engines can  
8 convert over 45% of diesel's chemical energy into useful mechanical energy, whereas gasoline  
9 engines convert only 30% of gasoline's energy into mechanical energy. To make use of this dense  
10 diesel fuel, diesel engines combine under high pressure to ignite a combination of diesel fuel and  
11 air through "compression ignition," as opposed to gasoline engines that typically use electric  
12 discharge from a spark plug to ignite a combination of gasoline and air through "spark ignition."  
13 Though more efficient, diesel engines come with their own set of challenges, as emissions from  
14 diesel engines can include higher levels of NO<sub>x</sub> and particulate matter ("PM"), or "soot" than  
15 emissions from gasoline engines due to the different ways the different fuels combust and the  
16 different ways the resulting emissions are treated following combustion. One way NO<sub>x</sub> emissions  
17 can be reduced by adjusting the compression and temperature, but that in turn produces PM, a  
18 similarly-undesirable hydrocarbon-based emission. Another way NO<sub>x</sub> emissions can be reduced  
19 is through expensive exhaust gas after treatment devices, primarily, catalytic converters, that use  
20 a series of chemical reactions to transform the chemical composition of a vehicle's NO<sub>x</sub> emissions  
21 into less harmful, relatively inert, and triple bonded nitrogen gas (N<sub>2</sub>; just over 78% of the Earth's  
22 atmosphere by volume consists of N<sub>2</sub>) and carbon dioxide (CO<sub>2</sub>).

23           41.     Diesel engines thus operate according to this trade-off between price, NO<sub>x</sub> and PM,  
24 and for the California Air Resources Board ("CARB") to designate a diesel car as a "clean"  
25 vehicle, it must produce both low PM and low NO<sub>x</sub>.

26           42.     California's strict emission standards posed a serious challenge to Volkswagen's  
27 engineers. In fact, during a 2007 demonstration in San Francisco, the chief of the TDI's research  
28 and development team, Wolfgang Hatz, lamented presciently that "[Volkswagen] can do quite a

1 bit and we will do a bit, but ‘impossible we cannot do . . . From my point of view, the [CARB  
2 standard] is not realistic... I see it as nearly impossible for [Volkswagen].”

3 43. It was of the utmost importance to Volkswagen that it achieve (or at least appear to  
4 achieve) this “impossible” goal, for it could not legally sell a single vehicle that failed to comply  
5 with California emissions regulations.

6 44. California’s regulator, CARB, requires that automakers complete an application  
7 and obtain an Executive Order (“EO”), confirming compliance with California’s emission  
8 regulations, before allowing the vehicle onto California’s roads.

9 ///

10 45. Thus, in order to successfully grow the U.S. Diesel market and meet its ambitious  
11 objectives, it was critical that Volkswagen develop the technology to maintain the efficient,  
12 powerful performance of a diesel, while drastically reducing NO<sub>x</sub> emission to comply with  
13 California emission standards.

14 46. This engineering dilemma led to a deep dilemma at Volkswagen that led to  
15 proposals for two divergent exhaust gas after treatment technical approaches. One approach  
16 involved a selective catalytic reduction (“SCR”) system that proved to be effective but expensive.  
17 The other, which utilized a lean NO<sub>x</sub> trap, was significantly cheaper but was less effective and  
18 resulted in lower fuel efficiency.

19 47. The SCR system utilized the organic compound urea, a post-combustion emission  
20 reductant generically referred to as “Diesel Exhaust Fluid” or “DEF.” When injected into the  
21 exhaust stream in a catalyst chamber, urea converts NO<sub>x</sub> into nitrogen gas, water, and carbon  
22 dioxide. The SCR system was expensive, costing \$350 per vehicle, and came with other  
23 compromises, including, primarily, the need for installation of a DEF tank that would require  
24 regular refills. Volkswagen decided to drop the SCR system because the \$350 per-vehicle cost  
25 was deemed too expensive.

26 48. The second strategy, the NO<sub>x</sub> traps, involved the storage of NO<sub>x</sub> emissions in a  
27 catalyst substrate during vehicle operation. Once the substrate filled up, the system burned off the  
28 stored NO<sub>x</sub> by pumping an extra burst of fuel into the cylinders, most of which passed through to

1 the converter, where it then converts the NO<sub>x</sub> into less harmful emissions. This method was  
2 cheaper and easier to implement than the SCR system. The NO<sub>x</sub> trap system was less effective at  
3 reducing emissions, however, and resulted in lower miles-per-gallon fuel efficiency, directly  
4 contradicting one of the key elements (high miles-per-gallon fuel efficiency) necessary to execute  
5 Volkswagen's ambitious diesel sales goals. Accordingly, this option, too, was unacceptable to  
6 Volkswagen.

7 49. But at Volkswagen, failure was not an option. According to many sources  
8 (including journalists, industry insiders, and Volkswagen whistleblowers), Volkswagen's ranking  
9 officials directed its engineers to find a way to meet emissions standards, including those of  
10 California, despite tight budgetary and technical constraints, or suffer the consequences. For  
11 example, former CEO of Volkswagen Aktiengesellschaft, Ferdinand Piëch, created "a culture  
12 where performance was driven by fear and intimidation," and his leadership was characterized as  
13 a "reign of terror."<sup>1</sup> Employees were told, "[y]ou will sell diesels in the U.S., and you will not fail.  
14 Do it, or I'll find somebody who will."<sup>2</sup> Piëch was infamous for firing subordinates who failed to  
15 meet his exacting standards: "Stories are legion in the industry about Volkswagen engineers and  
16 executives shaking in their boots prior to presentations before Piech, knowing that if he was  
17 displeased, they might be fired instantly."<sup>3</sup> And so it seems, out of self-preservation, the defeat  
18 device was created.

19 50. Volkswagen engineers had to find a solution to the "impossible" problem of passing  
20 stricter emission standards while maintaining performance and fuel efficiency, all while hamstrung  
21 by cost-cutting measures. And it had to be done fast, because the new diesel vehicles were  
22 scheduled for imminent release in the U.S. Ultimately, Volkswagen ran out of time and instead  
23 of being honest and risk being fired, executives, engineers, and others conspired to cheat California  
24 emissions standards by installing a "defeat device" in the new diesel vehicles, including Plaintiff's  
25 vehicle, so that those vehicles could "pass" CARB emission testing, and Volkswagen could obtain  
26

27 <sup>1</sup> Bob Lutz, *One Man Established the Culture That Led to VW's Emissions Scandal*, Road & Track (Nov. 4, 2015),  
28 <http://www.roadandtrack.com/car-culture/a27197/bob-lutz-vw-diesel-fiasco/>.

<sup>2</sup> *Id.*

<sup>3</sup> Doron Levin, *The Man Who Created VW's Toxic Culture Still Looms Large*, Fortune (Oct. 16, 2015),  
<http://fortune.com/2015/10/16/vw-ferdinand-piech-culture/>.



1 EOs to sell the vehicles to make its sales targets throughout California.

2 51. After it became clear that the TDI engine would not meet California emissions  
3 standards by the launch of the Jetta TDI “clean diesel,” initially scheduled for 2007 but delayed  
4 due emission testing failure, Volkswagen decided to cheat. It has been reported that the decision  
5 to cheat CARB, and other regulators worldwide was an “open secret” in Volkswagen’s engine  
6 development department,<sup>4</sup> as it was necessary for the “EA 189 engine to pass U.S. diesel emissions  
7 limit [including California’s] within the budget and time frame allotted.”<sup>5</sup>

8 52. All modern engines are integrated with sophisticated computer components to  
9 manage the vehicle’s operation, such as an electronic diesel control (“EDC”). The EDC used by  
10 Volkswagen in its TDI engine, including the TDI engine in Plaintiff’s vehicle, is more formerly  
11 referred to as the Electronic Diesel Control Unit 17 (“EDC Unit 17”). The EDC Unit 17 was  
12 tested, manufactured, and sold by Robert Bosch GMBH (“Bosch”). Upon its introduction, EDC  
13 Unit 17 was publicly touted by Bosch as follows:

14 ... EDC17 ... controls every parameter that is important for  
15 effective, low-emission combustion.

16 Because the computing power and functional scope of the new  
17 EDC17 can be adapted to match particular requirements, it can be  
18 used very flexibly in any vehicle segment on all the world’s markets.  
19 In addition to controlling the precise timing and quantity of  
20 injection, exhaust gas recirculation, and manifold pressure  
21 regulation, it also offers a large number of options such as the  
22 control of particulate filters or systems for reducing nitrogen oxides.  
The Bosch EDC17 determines the injection parameters for each  
cylinder, making specific adaptations if necessary. This improves  
the precision of injection throughout the vehicle’s entire service life.  
The system therefore makes an important contribution to observing  
future exhaust gas emission limits.<sup>6</sup>

23 53. EDC Unit 17 was widely used throughout the automotive industry, including BMW  
24 and Mercedes, to operate modern clean diesel engines. Bosch worked with each vehicle  
25 manufacturer that utilized EDC Unit 17 to create a unique set of specifications and software code

26 <sup>4</sup> Georgina Prodham, *Volkswagen probe finds manipulation was open secret in department*, Reuters (Jan. 23, 2016),  
27 <http://www.reuters.com/article/us-volkswagen-emissions-investigation-idUSKCN0V02E7>.

28 <sup>5</sup> Jay Ramey, *VW chairman Poetsch: Company ‘tolerated breaches of rules’*, Autoweek (Dec. 10, 2015),  
<http://autoweek.com/article/vw-diesel-scandal/vw-chairman-poetsch-company-toerated-breaches-rules>.

<sup>6</sup> See February 28, 2006, Bosch press release, “The brain of diesel injection: New Bosch EDC17 engine  
management system,” <http://www.bosch-presse.de/presseforum/details.htm?txtID=2603&locale=en>



1 to manage the vehicle's engine operation.

2 54. With respect to Volkswagen's TDI vehicles, including Plaintiff's vehicle, however,  
3 EDC Unit 17 was also used to enable Bosch and Volkswagen to surreptitiously evade emissions  
4 regulations. Bosch and Volkswagen worked together to develop and implement a specific set of  
5 software algorithms for implementation in Volkswagen's TDI vehicles, which enabled  
6 Volkswagen to adjust fuel levels, exhaust gas recirculation, air pressure levels, and even urea  
7 injection rates (for applicable vehicles).

8 55. When carmakers test their vehicles against CARB emission standards, they place  
9 their cars on dynamometers (large rollers) and then perform a series of specific maneuvers  
10 prescribed by federal regulations. Bosch's EDC Unit 17 gave Volkswagen the power to detect test  
11 scenarios by monitoring vehicle speed, acceleration, engine operation, air pressure and even the  
12 position of the steering wheel. When the EDC Unit 17's detection algorithm detected that the  
13 vehicle was on a dynamometer (and undergoing an emission test), additional software code within  
14 the EDC Unit 17 downgraded the engine's power and performance and upgraded the emissions  
15 control systems' performance by switching to a "dyno calibration" to cause a subsequent reduction  
16 in emissions to legal levels. Once the EDC Unit 18 detected that the emission test was complete,  
17 the EDC Unit 17 would then enable a different "road calibration" that caused the engine to return  
18 to full power while reducing the emissions control systems' performance, and consequently,  
19 caused the car to spew the full amount of NOx emissions out on the road, in excess of California's  
20 emissions standards.

21 56. Thus, in order to obtain the EOs necessary to sell its vehicles in California,  
22 Volkswagen did not disclose, and affirmatively concealed, the presence of the test-detecting and  
23 performance altering software code within the EDC Unit 17 from government regulators. In other  
24 words, Volkswagen lied to the government, its customers, including Plaintiff, and the public at  
25 large.

26 57. Because the EOs were fraudulently obtained, and because all Volkswagen vehicles  
27 equipped with the TDI engine did not conform to the specifications provided in the EO  
28 applications, the vehicles, including Plaintiff's vehicle, were never covered by valid EOs and, thus,

1 were never legal for sale, nor were they CARB compliant, as presented. Volkswagen hid these  
2 facts from CARB, other regulators, consumers, and Plaintiff, and it continued to sell and lease the  
3 vehicles to the driving public, despite their illegality.

4 58. Volkswagen hid the fact of the defeat devices from CARB, such that the EOs were  
5 fraudulently obtained. Volkswagen submitted EO applications that described compliant  
6 specifications and concealed the dual-calibration strategy of the defeat device. In reality, the  
7 vehicles differed in material respects from the specifications described in the EO applications.

8 59. Because the EOs were fraudulently obtained, vehicles equipped with the TDI  
9 engine, including Plaintiff's vehicle, were never covered by valid EOs and, thus, were never  
10 offered legally for sale. Volkswagen hid these facts from CARB, and consumers, including  
11 Plaintiff, and it continued to sell and lease the vehicles to the public, including Plaintiff, despite  
12 their illegality.

13  
14 **Volkswagen's "Clean" Diesel Advertising Campaign**

15 60. While secretly using defeat devices to bypass California emission testing,  
16 Volkswagen publicly declared a landmark victory – touting that it had successfully optimized its  
17 engines to maintain legal emissions, while simultaneously enjoying the cost savings and  
18 convenience factors of a lean NO<sub>x</sub> trap system. Volkswagen claimed it accomplished this by  
19 monitoring and adjusting combustion conditions and using a two-stage exhaust gas recirculation  
20 system to reduce initial emissions, while neutralizing the remaining ones with a lean NO<sub>x</sub> trap to  
21 comply with California law. Volkswagen branded and advertised this purportedly revolutionary  
22 technology to American consumers as "CleanDiesel" TDI technology.

23 61. Volkswagen's "clean" diesel campaign was built upon a lie. Indeed, the TDI  
24 equipped vehicles were so "dirty" that they could not pass the minimum emission standards in  
25 California, and Volkswagen had to lie in order to sell them in the California. But, of course,  
26 Volkswagen marketed and sold these vehicles without ever disclosing to consumers that they were  
27 unlawful to sell or drive due to their high levels of NO<sub>x</sub> emissions.

28 62. Volkswagen's "clean" diesel campaign was its key selling point for consumers

1 increasingly concerned about the environment. Its marketing mission was to “get clean-diesel  
2 power the recognition it deserves as a true ‘green’ technology,” thereby growing Volkswagen’s  
3 market share to match its lofty goals. The objective was to change the way consumers thought of  
4 diesel technology, by replacing the mental image of sulfur emissions amid clouds of thick soot  
5 with that of heightened efficiency and reduced CO<sub>2</sub> emissions. In fact, the Volkswagen website  
6 stated: “This ain’t your daddy’s diesel. Stinky, smoky, and sluggish. Those old diesel realities no  
7 longer apply. Enter TDI “clean” diesel. Ultra-low-sulfur fuel, direct injection technology, and  
8 extreme efficiency. We’ve ushered in a new era of diesel.”

9         63. Dubbing these diesel engines as “CleanDiesel” was a symptom of the brazen  
10 arrogance underlying the fraud. Volkswagen’s entire marketing campaign, from the branding of  
11 the products to the advertisements, focused on convincing consumers that the TDU equipped  
12 vehicles were not merely compliant with California emission regulations, but that they exceeded  
13 them. This deception culminated in a Guinness World Record attempt in a 2013 Volkswagen  
14 Passat TDI, which ironically won an award for “lowest fuel consumption—48 U.S. states for a  
15 non-hybrid car.”

16         64. Volkswagen pitched its Audi diesel engines as environmentally friendly, powerful,  
17 and efficient. Volkswagen’s advertisements deceptively portrayed its Audi Vehicles as clean and  
18 safe for the environment, unlike the diesels of yesteryear.

19         65. Volkswagen proclaimed that “[d]iesel [was] no longer a dirty word,” but failed to  
20 disclose that its vehicles were so dirty that they could not pass emission standards in the California  
21 and that the only reason why they were introduced into the stream of commerce here is because  
22 Volkswagen fraudulently obtained EOs from CARB for these vehicles. With equal audacity,  
23 Volkswagen advertised that, by driving an Audi TDI, you could “[p]rotect the environment and  
24 look good doing it,” while failing to disclose the pernicious NO<sub>x</sub> spewed into the environment.

25         66. Volkswagen also ran numerous TV commercials for its Audi “clean” diesel  
26 vehicles, many of which touted the “eco-friendly” characteristics of its diesel technology. One ad,  
27 “The Green Police” (which aired during the 2010 Super Bowl) portrayed a world in which the  
28 environmental police (“Green Police”) arrested people for using Styrofoam cups, failing to

1 compost, asking for plastic bags at the grocery store, throwing out batteries, and drinking water  
 2 from plastic bottles. And at a highway checkpoint, the “ECO ROADBLOCK,” the Green Police  
 3 flagged cars that were harmful to the environment. When the Green Police at the ECO  
 4 ROADBLOCK see an Audi A3 TDI SportWagen, they give the car a “thumbs up” and allow the  
 5 driver to bypass the roadblock. After the white A3 TDI cruises past the other vehicles, the screen  
 6 fades to black and falsely touts the supposed “green credentials” of the A3 TDI.

7 ///

8 67. Volkswagen also made false representations in print brochures available at  
 9 dealerships and on Audi’s website. For example, an Audi 2011 A3 TDI brochure states:

10 With the potent combination of direct diesel injection and  
 11 turbocharging, the 2.0-liter TDI® clean diesel engine delivers an  
 12 impressive 236 lb-ft. of torque and produces 140hp. The power and  
 13 performance is complemented with impressive EPA-estimated 30  
 14 MPG city and 42 MPG highway ratings. ***Producing 30 percent  
 fewer CO<sub>2</sub> emissions than a comparable gasoline engine, the 2.0  
 TDI clean diesel also meets or exceeds the 50 state emissions  
 requirements.***

15 . . .

16 ***Long gone are the days of dirty, smoking diesel engines. Audi  
 TDI clean diesel technology is responsible for the cleanest diesel  
 engines in the world,*** with 30 percent fewer CO<sub>2</sub> emissions than  
 17 comparable gasoline engines, making it an environmentally friendly  
 18 alternative to gasoline power. ***In fact, TDI clean diesel is  
 compliant with California’s ULEV II requirement—the world’s  
 most stringent emission standard. The result is a significant  
 reduction in emissions that contribute to global warming.***

21 (Emphasis added.)

22 68. Audi’s 2016 A6 and A7 brochures similarly (and falsely) stated that the TDI  
 23 versions of these cars meet emission rating “ULEV II,” and the 2016 A6, A7, and Q5 brochures  
 24 all similarly stated:

25 Taking advantage of the greater power density of diesel fuel over  
 26 traditional gasoline, the available 240-hp 3.0-liter TDI® clean  
 27 diesel V6 delivers incredible torque (428 lb-ft) and passing power,  
 while boasting impressive fuel efficiency numbers. ***It also produces  
 fewer emissions with a combination of Piezo direct injection, a  
 high compression ratio, and innovative after-exhaust treatment  
 that helps eliminate up to 95% of diesel NOx emissions.***

(Emphasis added.)

69. An Audi 2016 A8 brochure also listed the TDI models as meeting emission rating “ULEV II,” and further stated:

With 240 hp and 428 lb-ft of torque on tap, the available 3.0-liter TDI® clean diesel engine’s elasticity in the passing lane is almost as impressive as its ability to take on even the longest road trips. *And with features like AdBlue® exhaust after-treatment helping to make every journey a little cleaner, this is a performance win for all sides.* (Emphasis added.)

#### **Volkswagen Profit’s from Selling Vehicle’s Equipped with the Defeat Device**

70. Volkswagen’s massive advertising campaign for the TDI equipped vehicles proved highly successful, as Volkswagen took a commanding lead in U.S. diesel vehicle sales. Volkswagen’s diesel vehicles were profiled on environmental websites and blogs as the responsible choice, relying on Volkswagen’s representations of high mileage and low emissions.

71. And the success of Volkswagen’s advertising campaign resulted in skyrocketing sales. In 2007, Volkswagen sold 230,572 cars in the United States and a negligible number of those were diesel vehicles. In fact, in 2007 only approximately 16,700 light-duty diesel vehicles were sold in the United States. As Volkswagen released its “clean” diesel lineup and fraudulent advertising campaign, sales of TDI vehicles grew dramatically, from 43,869 in 2009 to a peak of 111,285 in 2013. This largely accounted for Volkswagen’s sales growth to over 400,000 sales in 2013, nearly double the sales in 2007. Likewise, the TDI vehicles contributed significantly to Audi’s growth from 93,506 sales in 2007 to 182,011 in 2014.

72. Volkswagen reaped considerable benefit from their fraud, charging premiums of thousands of dollars for the “clean” diesel models of the TDI vehicles.

73. Volkswagen also engaged in an aggressive lobbying campaign for federal tax credits for the TDI vehicles, akin to the credits offered for electric cars. These efforts were met with some success, as many of the TDI vehicles were deemed eligible for federal income tax credits in order to spur “clean” diesel technology. In fact, at least \$78 million was earmarked for TDI Jetta buyers in 2009 and 2010.

74. Volkswagen’s fraudulent scheme started to unravel approximately five years after

1 Volkswagen introduced its first diesel model containing the defeat device into the U.S. stream of  
2 commerce. In May 2014, West Virginia University's Center for Alternative Fuels, Engines &  
3 Emissions published results of a study commissioned **in California** by the International Council  
4 on Clean  
5 Transportation ("ICCT"), which found that certain of the TDI equipped vehicles' real world NOX  
6 and other emissions exceeded the allowable CARB emission standards.

7 75. The ICCT researchers had been comparing the real-world performance of "clean"  
8 diesel vehicles in Europe with reported results and noted numerous discrepancies. Since California  
9 emission regulations were significantly more stringent than its European counterparts, the ICCT  
10 sought to test the equivalent California "clean" diesel cars, presuming that they would run cleaner.  
11 West Virginia University's team of emissions researchers was a qualified and enthusiastic partner,  
12 as they had already been engaged in the study of heavy truck emissions.

13 76. Shockingly, the study showed that, contrary to testing lab results, real world  
14 driving of Volkswagen "clean" diesel vehicles produced levels of NO<sub>x</sub> up to 40 times higher than  
15 legal limits promulgated by the CARB.

16 77. The results of this study prompted an immediate investigation by CARB, who  
17 demanded an explanation from Volkswagen. Despite knowing that the TDI vehicles contained  
18 emission systems designed for fraudulent purposes—and defeat devices intentionally designed to  
19 comply with California emission standards on a test bench but not under normal driving operation  
20 and use—Volkswagen failed to come clean. Instead, Volkswagen denied the allegations and  
21 blamed faulty testing procedures.

22 78. In December 2014, Volkswagen issued a recall purportedly to update emission  
23 control software in the TDI vehicles, and CARB conducted follow-up testing of the TDI vehicles  
24 in the laboratory and during normal road operation. CARB attempted to identify the source and  
25 nature of the TDI vehicles' poor performance and determine why their on-board diagnostic  
26 systems did not detect the increased emissions. None of the technical issues suggested by  
27 Volkswagen adequately explained the NO<sub>x</sub> test results as confirmed by CARB.  
28

79. Dissatisfied with Volkswagen's explanations, California government officials

1 finally threatened to withhold the emissions certifications for Volkswagen's 2016 diesel vehicles  
2 until it adequately explained the anomaly of the higher emissions. Then, and only then, did  
3 Volkswagen finally relent and start to lift the curtain on its fraudulent scheme.

4 80. On September 3, 2015, Volkswagen officials finally disclosed at a meeting with  
5 CARB that it had installed a sophisticated software algorithm on the 2.0-liter TDI  
6 vehicles, which could detect when the car was undergoing emission testing on a test bench and  
7 switch the car into a cleaner running mode.

8 81. On September 18, 2015, CARB sent a letter to Volkswagen advising that it had  
9 initiated an enforcement investigation of Volkswagen pertaining to the vehicles at issue in the a  
10 notice of violation sent previously by another agency. .

11 82. On September 20, 2015, Volkswagen confirmed that it had ordered dealers to stop  
12 selling both new and used vehicles with 2.0-liter diesel engines.

13 83. Volkswagen continued to sell its 3.0-liter diesel models, despite containing similar,  
14 but not-yet-disclosed defeat devices.

15 84. On September 22, 2015, Volkswagen announced that 11 million diesel cars  
16 worldwide were installed with the same defeat device software that had evaded emission testing  
17 by California regulators.

18 **PLAINTIFF'S EXPERIENCE**

19 85. The vehicle was equipped with a TDI diesel engine.

20 86. On February 18, 2011, Plaintiff visited Newport Auto Center in Newport Beach,  
21 California, with hopes of purchasing a new vehicle. Plaintiff walked the dealership in search of a  
22 vehicle to meet Plaintiff's needs. Plaintiff was specifically searching for a vehicle that was fuel  
23 efficient and had low emissions. In searching the car inventory on the car lot, Plaintiff reviewed  
24 the window stickers of 2011 Audi Q7 TDI vehicles that caught his eye. The window stickers on  
25 most of these vehicles identified the vehicles as having low emissions. Plaintiff identified a 2011  
26 Audi Q7 TDI she was interested in purchasing. Plaintiff's conversations with the salesman and  
27 manager and the window sticker on the vehicle reinforced Plaintiff's belief that the vehicle was  
28 in fact equipped with a clean diesel engine that had low emission output. The salesman never



1 disclosed to Plaintiff that the vehicle was not a low emission vehicle. Plaintiff relied on the  
2 statements on the window sticker and marketing materials she had received about the 2011 Audi  
3 Q7 TDI and the TDI diesel engine.

4 87. Prior to purchasing the vehicle, Plaintiff reviewed marketing brochures, viewed  
5 television commercials and/or heard radio commercials about the qualities of the Volkswagen's  
6 TDI engine. Plaintiff also relied on Volkswagen's reputation as an established and experienced  
7 auto manufacturer; Plaintiff relied on the statements made during the sales process by  
8 Volkswagen's agents, on window stickers, and within the marketing brochures provided by  
9 Volkswagen regarding it being a "green" vehicle. However, Volkswagen and its authorized  
10 agents did not publicly or privately disclose to Plaintiff any information about the defeat devices.  
11 These omissions were material to Plaintiff's decision to purchase the vehicle. Had Volkswagen  
12 and/or its authorized agents publicly or privately disclosed the existence of the defeat device and  
13 the truth about the TDI's emissions before Plaintiff purchased the vehicle, Plaintiff would have  
14 been aware of such disclosures, and would not have purchased the vehicle.

15 All Statute of Limitations Periods are Tolled by the Discovery Rule and the  
16 Doctrine of Fraudulent Concealment

17 88. Volkswagen misrepresented the qualities of the TDI diesel engine in the Vehicle,  
18 including its emissions output, to Plaintiff at the time of the sale of the Vehicle. Volkswagen also  
19 concealed the fact that the TDI diesel engine's EDC Unit 17 defeat device was designed to  
20 fraudulently defeat emissions standards set by CARB.

21 89. At all relevant times, Volkswagen was aware of the fraudulent nature of the TDI diesel  
22 engine equipped with the EDC Unit 17 defeat device.

23 90. As described in more detail above, as early as 2005, Volkswagen began developing  
24 the TDI diesel engine and had made the determination to equip the engine with the EDC Unit 17  
25 defeat device specifically programmed to defeat California emissions standards set by CARB,  
26 prior to it began selling vehicles equipped with the TDI diesel engine in or around 2007. At no  
27 point prior to the sale of the Vehicle to Plaintiff or during Plaintiff's ownership of the Vehicle did  
28 Volkswagen or an authorized dealer ever inform Plaintiff that his vehicle was equipped with an

1 fraudulent EDC Unit 17 defeat device or that Volkswagen had fraudulently obtained an EO from  
2 CARB that permitted Volkswagen to sell the Vehicle in California.

3 91. Volkswagen had a duty to disclose the concealed facts alleged above because  
4 Volkswagen knew that Plaintiff did not know a material fact and further knew that such facts were  
5 not readily accessible to the Plaintiff because Volkswagen actively concealed those facts.

6 92. Volkswagen had a duty to disclose the concealed facts alleged above because  
7 Volkswagen made misrepresentations in its marketing materials and window stickers and through  
8 its authorized sales representatives about the quality, characteristics, and emissions output of the  
9 TDI diesel engine.

10 93. Volkswagen had a duty to disclose the concealed facts alleged above because  
11 Volkswagen actively concealed material facts in order to induce a false belief.

12 94. Volkswagen intended for Plaintiff to rely on those misrepresentations to conceal the  
13 fact that the Vehicle's TDI diesel engine equipped with the EDC Unit 17 defeat device did not  
14 comply with California's emissions regulations.

15 95. Prior to the sale of the Vehicle, and at all times thereafter, Defendant therefore failed  
16 to disclose the existence of the vehicle's fraudulent nature to Plaintiff, which prevented the Vehicle  
17 from conforming to California emissions regulations. Volkswagen also continued to conceal the  
18 fact that Plaintiff's Vehicle did not, in fact, obtain an EO as required by CARB for sale in  
19 California.

20 96. On or around September 22, 2015, after extensive investigations by government  
21 entities, including CARB, Defendant Volkswagen finally publicly admitted to the fraud and  
22 announced that 11 million diesel cars worldwide were installed with the same defeat device  
23 software that had evaded emission testing by California regulators. This was the earliest date that  
24 Volkswagen made any attempt to notify the public of any of the fraudulent defeat device and its  
25 scheme to defraud consumers and government regulators. This date was the earliest date that  
26 Plaintiff could have had any sort of notice of the facts which give rise to Plaintiff's fraud cause of  
27 action. Volkswagen did not disclose any of this information prior to the sale of the vehicle to  
28 Plaintiff or at any earlier date during ownership. Accordingly, Plaintiff could not have discovered

1 Plaintiff's claims prior to September 2015. Plaintiff could not, through reasonable and diligent  
2 investigation, have discovered such on an earlier date because of Volkswagen's fraudulent  
3 misrepresentations and concealment of the EDC Unit 17 defeat device and the scheme to defraud  
4 consumers and government entities, as previously alleged above. The statute of limitations for  
5 each of Plaintiff's claims against Volkswagen was therefore tolled under the delayed discovery  
6 rule and the doctrine of fraudulent concealment until Plaintiff could have first discovered on or  
7 around September 2015, that Volkswagen had misrepresented the characteristics of the TDI diesel  
8 engine and concealed the known fraudulent nature of the EDC Unit 17 defeat device and  
9 fraudulently obtained EOs during the ownership of the Vehicle.

10 97. Because Volkswagen failed to disclose these foregoing facts to Plaintiff, all statute of  
11 limitations periods with respect to sale of the Vehicle were tolled by the doctrines of fraudulent  
12 concealment, the discovery rule, and/or equitable tolling. As alleged herein, Volkswagen  
13 wrongfully concealed the fact (1) that the Vehicle was equipped with a fraudulent EDC Unit 17  
14 defeat device, (2) that the TDI diesel engine did not comply with California's emissions standards,  
15 and (3) that Volkswagen had fraudulently obtained the EO from CARB that allowed it to sell the  
16 Vehicle in California.

17 98. Plaintiff did not discover the operative facts that are the basis of the claims alleged  
18 herein because the facts were concealed in confidential and privileged documents, which a  
19 consumer would not know about and could not obtain.

20 99. No amount of diligence by Plaintiff could have led to the discovery of these facts  
21 because they were kept secret by Volkswagen and, therefore, Plaintiff was not at fault for failing  
22 to discover these facts.

23 100. Plaintiff did not have actual knowledge of facts sufficient to put him on notice.  
24 Plaintiff did not know, nor could have known, about the EDC Unit 17 defeat device or the fact that  
25 the Vehicle did not comply with California emissions regulations and did not have a valid EO from  
26 CARB because the EO was obtained fraudulently because, as alleged above, Volkswagen kept this  
27 information highly confidential.

28 **FIRST CAUSE OF ACTION**

**(Fraud in the Inducement – Intentional Misrepresentation) – *Against Volkswagen***  
***Defendants ONLY***

101. Plaintiff incorporates by reference each preceding paragraph as though fully set forth herein.

102. Volkswagen made multiple public representations about quantifiable qualities of the TDI engine, including statements regarding its emissions, its compliance with government regulations, fuel efficiency, power, and drivability.

103. Volkswagen drafted, produced, and distributed marketing brochures to the public containing factual representations about the TDI engine. Volkswagen also engaged in a nationwide television and print advertising campaigns containing factual representations about the TDI engine. Volkswagen's marketing the Vehicle represented the TDI engine's "green" technology, as further described in paragraphs **60-69**, above.

104. Unfortunately, the Vehicle as delivered to Plaintiff was equipped with “defeat device” that was specifically designed to circumvent government environmental regulations, including California emissions standards, and to defraud the public at large, including the Plaintiff.

105. The defeat device was not a defect exclusive to Plaintiff's Vehicle but was intentionally designed by **Defendants** with the intent to defraud government regulators and the public by convincing them that TDI engine equipped vehicles actually complied with government environmental regulations, including California's emissions standards. Volkswagen had exclusive knowledge of this fact and concealed information to fraudulently induce Plaintiff and other consumers into purchasing vehicles equipped with the TDI engine and the defeat device. As such, the defeat device is more than just a non-conformity to the Vehicle's warranties, but, rather, the basis of a wide ranging fraud and a breach of a separate duty that arises from Volkswagen's exclusive knowledge and concealment of the defeat device.

106. Volkswagen made such representations regarding TDI engine despite its extensive internal knowledge of the defeat device and the poor emissions performance. Volkswagen's knowledge of the defeat device and intentional fraud is laid out in detail above.

1           107. Defendants intended that Plaintiff rely on the representations made in marketing  
2 brochure and add campaigns related to the “clean diesel” TDI engine in inducing Plaintiff to  
3 purchase the Vehicle.

4           108. Plaintiff reasonably relied on **Defendants’** representations related to the Vehicle  
5 being “clean diesel” and “green: because Volkswagen was the manufacturer of the vehicle and  
6 claimed to have performed and relied upon extensive pre-release testing of the Vehicle’s emissions  
7 in compliance with California’s rigorous emissions standards. Volkswagen was in a superior  
8 position of knowledge.

9           109. Plaintiff was harmed by purchasing a vehicle that Plaintiff would not have  
10 purchased had she known the true facts about the defeat device and the Vehicle’s actual emissions.

11           110. Plaintiff’s reliance on Defendants’ representations about the Vehicle’s “green”  
12 qualities was a substantial factor in Plaintiff’s harm, as Volkswagen and its agents were the  
13 exclusive source of information about the emissions qualities, the defeat device, and the intent to  
14 defraud the public.

## 15           **SECOND CAUSE OF ACTION**

### 16           **(Fraud in the Inducement – Concealment) –Against Volkswagen Defendants ONLY**

17           111. Plaintiff incorporates herein by reference each and every allegation contained in the  
18 preceding and succeeding paragraphs as though herein fully restated and re-alleged.

19           112. Volkswagen and its agents intentionally concealed and failed to disclose facts  
20 relating to TDI defeat device and the Subject Vehicle’s non-conformance with California emission  
21 standards.

22           113. Volkswagen was the only party with knowledge of the TDI defeat device because  
23 that knowledge came from an intentional scheme to defraud government regulators and consumers,  
24 including CARB and the Plaintiff. None of this information was available to the public, nor did  
25 **Defendants** publicly or privately disclose any of the information to Plaintiff. Volkswagen had  
26 exclusive knowledge of the defect.

114. Volkswagen actively concealed information from the public, preventing Plaintiff from discovering any of the concealed facts regarding the defeat device and the truth about the TDI engine emissions.

115. Prior to the date of sale, on the date of sale, and on the date of each of the repair attempts, **Defendants** had an opportunity to disclose to Plaintiff, but instead concealed from and failed to disclose to Plaintiff, any of the known irreparable issues with the Vehicle, **including** the existence of the TDI defeat device.

116. Volkswagen intended to deceive Plaintiff by concealing the existence of the TDI defeat device, in an effort to sell the Vehicle at a maximum price.

117. Prior to the sale of the Vehicle Defendant Volkswagen knew that the TDI defeat device was intended to use it to defraud CARB and the general public, including Plaintiff. Volkswagen specifically designed the TDI defeat device to fraudulently circumvent California emissions regulations and trick the public into purchasing vehicles that could not deliver on their emissions promises. Volkswagen intended the Vehicle to be sold to the public, including the Plaintiff with the fraudulent defeat device.

118. Plaintiff did not know about the TDI defeat device, the Vehicle's non-conformance with California emissions regulations, or Volkswagen's plan to defraud consumers at the time of sale.

119. Had Volkswagen and/or its agents publicly or privately disclosed the existence of the TDI defeat device or the Vehicle's failure to conform to California emissions standards to Plaintiff at or prior to the sale, Plaintiff would not have purchased the Vehicle.

120. Plaintiff was harmed by **Defendants'** concealment of the TDI defeat device because Plaintiff was induced to enter into the sale of a vehicle that Plaintiff would not have otherwise purchased.

121. Defendant's concealment of the defeat device and the fact that the Vehicle failed to conform to California emissions regulations was a substantial factor in causing Plaintiff's harm.

### **THIRD CAUSE OF ACTION**

**(Violation of the Song-Beverly Act – Breach of Implied Warranty) – *Against Volkswagen***

***Defendants ONLY***

122. Plaintiff incorporates herein by reference each and every allegation contained in the preceding and succeeding paragraphs as though herein fully restated and re-alleged.

123. Pursuant to the Song-Beverly Consumer Warranty Act (herein after the "Act") Civil Code sections 1790 *et seq.* the vehicle constitutes "consumer goods" used primarily for family or household purposes, and Plaintiff has used the vehicle primarily for those purposes.

124. Plaintiff is a "buyer" of consumer goods under the Act.

125. Defendant Volkswagen is a "manufacturer" and/or "distributor" under the Act.

126. Volkswagen and its authorized dealership at which Plaintiff purchased the Vehicle had reason to know the purpose of the Vehicle at the time of sale of the Vehicle. The sale of the Vehicle was accompanied by an implied warranty of fitness.

127. The sale of the Vehicle was accompanied by an implied warranty that the Vehicle was merchantable pursuant to Civil Code section 1792.

128. The Vehicle was not of the same quality as those generally acceptable in the trade because it was equipped with a defeat device.

129. The Vehicle was not fit for the ordinary purpose for which such goods are used because it was equipped with a defeat device.

130. The Vehicle did not measure up to the promises or facts stated on the container or label because it was equipped with a defeat device.

131. The Vehicle did not measure up to the promises or facts stated on the container or label because it was equipped with defeat device intended to deceive emissions tests and regulators, including CARB and California emissions standards.

132. Plaintiff is entitled to justifiably revoke acceptance of the Vehicle under Civil Code section 1794, *et seq.*; Plaintiff hereby revokes acceptance of the Vehicle.

133. Plaintiff is entitled to replacement or reimbursement pursuant to Civil Code section 1794, *et seq.*

134. Plaintiff is entitled to rescission of the contract pursuant to Civil Code section 1794, *et seq.* and Commercial Code section 2711.



135. Plaintiff is entitled to recover any “cover” damages under Commercial Code sections 2711, 2712, and Civil Code section 1794, *et seq.*

136. Plaintiff is entitled to recover all incidental and consequential damages pursuant to 1794 *et seq* and Commercial Code sections 2711, 2712, and 2713 *et seq*.

## **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment against **Defendants**, as follows:

1. For general, special and actual damages according to proof at trial;
2. For rescission of the purchase contract and restitution of all monies expended;
3. For incidental and consequential damages according to proof at trial;
4. For prejudgment interest at the legal rate;
5. For punitive damages pursuant to Civil Code section 3294;
6. For reasonable attorney's fees and costs of suit; and
7. For such other and further relief as the Court deems just and proper under the circumstances.

Dated: July 8, 2019

**KNIGHT LAW GROUP, LLP**

/s/ Amy Morse

---

Steve Mikhov (SBN 224676)

Amy Morse (SBN 290502)

Attorneys for Plaintiff,

SAMIRA SADEGHI

**DEMAND FOR TRIAL BY JURY**

**Plaintiff SAMIRA SADEGHI hereby demands a trial by jury to the full extent permitted by law.**

**Dated:** July 8, 2019

**KNIGHT LAW GROUP, LLP**

/s/ Amy Morse

**Steve Mikhov (SBN 224676)**

**Amy Morse (SBN 290502)**

**Attorneys for Plaintiff,  
SAMIRA SADEGHI**

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 10250 Constellation Blvd., Ste. 2500, Los Angeles, CA 90067.

I served the foregoing documents described as:

**1. AMENDED COMPLAINT**

Said documents were served on the interested parties in this action, by placing true copies thereof enclosed in sealed envelopes, with postage prepaid, addressed as follows:

Sullivan & Cromwell LLP  
William B. Monahan  
125 Broad Street  
New York NY 1004  
monahanw@sullcrom.com  
**Counsel for Defendant**

Sullivan & Cromwell LLP  
Sverker Kristoffer Hogberg  
125 Broad Street  
New York NY 1004  
hogbergs@sullcrom.com  
**Counsel for Defendant**

Sullivan & Cromwell LLP  
Natalie A. Muscatello  
125 Broad Street  
New York NY 1004  
muscatellon@sullcrom.com  
**Counsel for Defendant**

Sullivan & Cromwell LLP  
Laura K. Oswell  
125 Broad Street  
New York NY 1004  
oswelll@sullcrom.com  
**Counsel for Defendant**

XX BY E-MAIL OR ELECTRONIC TRANSMISSION: Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed July 8, 2019 at Los Angeles, California.

  
\_\_\_\_\_  
SARENA FARANESH